

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Abraham Dixon	Team: Squad #8	CCRB Case #: 201809019	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 10/30/2018 11:00 AM	Location of Incident: [REDACTED]	Precinct: 73	18 Mo. SOL 4/30/2020	EO SOL 12/15/2020	
Date/Time CV Reported Tue, 10/30/2018 11:27 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 10/30/2018 11:27 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Matthew Byrnes	25380	953714	PSA 2
2. Officers			PSA 2 and 073 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jason Gammello	31832	954842	PSA 2

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Force: Officers used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
B.POM Matthew Byrnes	Discourtesy: Police Officer Matthew Byrnes spoke discourteously to § 87(2)(b) [REDACTED]	[REDACTED]
C.POM Matthew Byrnes	Force: Police Officer Matthew Byrnes used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
D.POM Matthew Byrnes	Abuse: Police Officer Matthew Byrnes threatened to arrest § 87(2)(b) [REDACTED]	[REDACTED]

Case Summary

On October 30, 2018, § 87(2)(b) filed this complaint with the CCRB via phone [Board Review 01].

On October 30, 2018, at approximately 11:00 a.m., § 87(2)(b) observed Sheriff's officers (unknown whether they were New York City or New York State) and an NYPD officer arresting his cousin, § 87(2)(b) at § 87(2)(b) in Brooklyn. § 87(2)(b) observed several officers tackle and slam § 87(2)(b) into a patrol vehicle (**Allegation A: Force**, § 87(2)(g)). § 87(2)(b) approached the scene and asked PO Matthew Byrnes of PSA2, why his cousin was being arrested. PO Byrnes rushed towards § 87(2)(b) and pushed him stating, "Get the fuck out of here; do you want to be next?" (**Allegation B: Discourtesy**, § 87(2)(g); **Allegation C: Force**, § 87(2)(g)). PO Byrnes also stated, "Do you want to get locked up?" to § 87(2)(b) (**Allegation D: Abuse of Authority**, § 87(2)(g)).

Body-worn camera (BWC) footage was obtained for this incident from PO Shaun Chan, PO Wendell Dias, PO Ark Tar, Lieutenant Casey Morgan, PO Shannon Conlisk and PO Carlos Paredes of the 73rd Precinct. Completed and unedited versions of this footage are attached to Investigative Actions (IAs) 35, 36, 37, 38, 39, 40, 41 and 42 [BR 02, 03, 04, 05, 06, 07, 08, & 09].

Cell phone video footage of this incident was obtained from § 87(2)(b). A complete and unedited version of this footage is attached to IA 34 [BR 10].

Findings and Recommendations

Allegation (A) Force: Officers used physical force against § 87(2)(b)

It is undisputed that § 87(2)(b) was arrested by the NYC Sheriff's office and PO Byrnes and PO Jason Gammello were radioed to assist with the incident. It is also undisputed that § 87(2)(b) was at the scene of the incident.

§ 87(2)(b) provided a verified statement to the CCRB on November 5, 2018 [BR 11]. He stated that upon arriving at the scene, he observed two plain-clothes officers, identified as PO Byrnes and PO Gammello, eight uniformed NYPD officers and two uniformed NYS officers tackle and slam § 87(2)(b) into a patrol vehicle while pushing his head into the vehicle and grabbing both of his legs. § 87(2)(b) stated he observed § 87(2)(b) being slammed up against the patrol vehicle at least five times and he was picked up and slammed at least two times. § 87(2)(b) stated it was a combination of NYPD officers and Sheriff's officers that assisted in using force against § 87(2)(b) while arresting him.

The CCRB attempted to establish contact with § 87(2)(b) (see detailed IA 48). However, § 87(2)(b) stated that § 87(2)(b) declined to participate in the investigation because he was too busy. § 87(2)(b) did not provide the birth date of § 87(2)(b) and without it, the investigation was unable to establish contact with § 87(2)(b).

PO Byrnes provided a statement to the CCRB on January 17, 2019 [BR 12]. PO Byrnes stated he received a radio transmission from the Sheriff's office requesting officer assistance for a foot pursuit in the vicinity of § 87(2)(b) in Brooklyn. PO Byrnes and PO Gammello were the first NYPD officers on the scene. PO Byrnes stated § 87(2)(b) was already in handcuffs when he and PO Gammello arrived at the scene. PO Byrnes assisted with lifting § 87(2)(b) off the ground and placing him into the patrol vehicle. PO Byrnes did not recognize any other NYPD officers at the scene nor how many were at the scene. Overall, this was an arrest effected by the Sheriff's office and PO Byrnes did not know why § 87(2)(b) was being arrested because he did

not stay at the scene long enough to find out. PO Byrnes did not see any force being used to arrest § 87(2)(b). PO Byrnes did not see any officers pulling, slamming, and jumping on top of § 87(2)(b) during his arrest. PO Byrnes did not assist in pulling, slamming, and jumping on top of § 87(2)(b) during his arrest. PO Byrnes did not recall seeing § 87(2)(b) being tackled and slammed into a patrol car and his head being pushed into a patrol vehicle. PO Byrnes did not assist in § 87(2)(b) being tackled and slammed into a patrol car and his head being pushed into a patrol vehicle.

PO Gammello provided a statement to the CCRB on January 30, 2019 [BR 13]. § 87(2)(g) PO Gammello stated he assisted in placing § 87(2)(b) in the patrol car by linking his arm under § 87(2)(b) arm and lifting him up because he kept going limp and refusing to walk to the patrol car. PO Gammello did not see any officers pulling, slamming, and jumping on top of § 87(2)(b) during his arrest. PO Gammello did not assist in pulling, slamming, and jumping on top of § 87(2)(b) during his arrest. PO Gammello did not recall seeing § 87(2)(b) being tackled and slammed into a patrol car and his head being pushed into a patrol vehicle. PO Gammello did not assist in § 87(2)(b) being tackled and slammed into a patrol car and his head being pushed into a patrol vehicle.

The beginning of the BWC footage from PO Dias located in IA #36 depicts PO Dias and PO Gammello helping each other stand § 87(2)(b) up against a patrol vehicle [BR 03]. At 6 seconds, PO Byrnes is overseeing the assistance and exits the frame. Between 6 seconds and 1 minute, § 87(2)(b) is actively resisting being placed in the patrol vehicle by his legs going limp and cursing at officers. At 1 minute and 3 seconds, § 87(2)(b) is placed in the patrol vehicle by PO Dias and searched. At 1 minute and 30 seconds, PO Gammello is observing the search of § 87(2)(b). The BWC footage from IA #36 could not be embedded due to technical difficulties.

As per PO Byrnes' and PO Gammello's memo book entries, a radio transmission for members of service (MOS) assistance was requested at § 87(2)(b) at 11:03 a.m., on October 30, 2018 [BR 14 and 15]. At 11:05 a.m., PO Byrnes arrived at the scene with the NYC Sheriff's officer and one male perp was apprehended. At 11:15, PO Byrnes left the scene and resumed patrol.

A Threat Resistant and Incident (T.R.I.) report was not prepared as a result of this incident.

§ 87(2)(g)

§ 87(2)(g)

Allegation (B) Discourtesy: Police Officer Matthew Byrnes spoke discourteously to § 87(2)(b)

Allegation (C) Force: Police Officer Matthew Byrnes used physical force against § 87(2)(b)

Allegation (D) Abuse of Authority: Police Officer Matthew Byrnes threatened to arrest

§ 87(2)(b)

It is undisputed that § 87(2)(b) arrived at the scene and witnessed § 87(2)(b) being arrested. It is also undisputed that § 87(2)(b) attempted to record the incident with his cellular device.

§ 87(2)(b) stated that when he inquired about why his cousin was being arrested with PO Byrnes, PO Byrnes rushed towards him and then extended his arms to § 87(2)(b) chest area and pushed him stating, “Get the fuck out of here; do you want to be next?” [BR 11]. PO Byrnes repeated “get the fuck out of here” two more times. § 87(2)(b) stated that PO Byrnes’ face was touching his face as he pushed him back and told him to leave and his body was against § 87(2)(b) body. § 87(2)(b) responded by asking why PO1 put his hands on him when § 87(2)(b) did not touch him. PO1 then stated, “Do you want to get locked up?” § 87(2)(b) felt threatened and began to record the incident with his phone. During this interaction, PO Byrnes identified himself by name and provided his command.

In his statement to the CCRB, PO Byrnes stated § 87(2)(b) double-parked his car in the middle of the road, approached the officers from behind and was video-recording the incident [BR 12]. § 87(2)(b) was stating that § 87(2)(b) was his brother or family, but PO Byrnes did not completely recall what § 87(2)(b) was saying. PO Byrnes stated to § 87(2)(b) that he could record as long as he was on the sidewalk. PO Byrnes also stated that if § 87(2)(b) did not get on the sidewalk then he would be arrested for obstruction of governmental administration because § 87(2)(b) was right behind the officers interfering with the arrest. PO Byrnes repeated this several times and § 87(2)(b) eventually moved to the sidewalk. PO Byrnes did not recall physically moving § 87(2)(b) to the sidewalk or making any body contact with § 87(2)(b) during the incident. PO Byrnes then told § 87(2)(b) that he needed to move his double-parked vehicle or it would get towed because it was blocking other emergency vehicles from entering the scene. § 87(2)(b) did not move his vehicle during the time that PO Byrnes was at the scene. PO Byrnes did not recall pushing § 87(2)(b) or stating, “Get the fuck out of here, do you want to be next?”. PO Byrnes did not see any other officer push § 87(2)(b) and state, “Get the fuck out of here, do you want to be next?” PO Byrnes did not recall using any profanity or making physical contact with § 87(2)(b). PO Byrnes acknowledged walking towards § 87(2)(b) but denied making any physical contact with him.

In his CCRB statement, PO Gammello stated that after assisting with § 87(2)(b) § 87(2)(b) was behind him recording the incident [BR 13]. § 87(2)(b) moved within five feet of the scene and PO Byrnes told § 87(2)(b) to back up onto the sidewalk to keep a safe distance between officers and civilians. PO Gammello did not recall what § 87(2)(b) was saying and why he was recording the incident. PO Gammello did not give any verbal commands to § 87(2)(b) at any point during the incident. § 87(2)(b) refused to move out the street and onto the sidewalk several times and PO Byrnes asked § 87(2)(b) to remove his vehicle, which was double-parked in the middle of the street and blocking responding units. § 87(2)(b) moved himself to the sidewalk without any physical assistance or contact with PO Byrnes. PO Gammello did not recall seeing PO Byrnes pushing § 87(2)(b) and stating, “Get the fuck out of here, do you want to be next?”. PO Gammello did not see any other officer push § 87(2)(b) and state, “Get the fuck out

of here, do you want to be next?” PO Gammello did not recall hearing PO Byrnes using any profanity or making physical contact with § 87(2)(b)

As per PO Byrnes’ memo book entry, PO Byrnes told § 87(2)(b) multiple times to step onto the sidewalk. PO Byrnes’ memo book also notes that PO Byrnes told § 87(2)(b) to move his double-parked vehicle because it was blocking emergency vehicles from coming down the street [BR 14].

As per PO Gammello’s memo book entry, § 87(2)(b) was acting disorderly and refusing lawful orders to vacate the street and move double-parked vehicle [BR 15].

The beginning of cellular phone footage taken by § 87(2)(b) in IA #34 depicts § 87(2)(b) requesting PO Byrnes’ name which PO Byrnes provides [BR 10]. At 26 seconds, PO Byrnes reiterates that § 87(2)(b) needs to move his car. § 87(2)(b) responds by saying he cannot move his car because it is blocked by a patrol vehicle. At 38 seconds, PO Byrnes walks toward § 87(2)(b) and instructs him to move off the street. At 44 seconds, PO Byrnes is within an arm’s length of § 87(2)(b) because the video goes dark. However, it is not clear whether physical contact is made. At 2 minutes and 15 seconds, § 87(2)(b) asks PO Byrnes where he is from and PO Byrnes replies, “PSA2.”

§ 87(2)(g)

According to New York Penal Law § 195.05, a person is guilty of obstructing governmental administration when he intentionally obstructs, impairs or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an official function, by means of intimidation, physical force or interference, or by means of any independently unlawful act, or by means of interfering, whether or not physical force is involved, with radio, telephone, television or other telecommunications systems owned or operated by the state, or a county, city, town, village, fire district or emergency medical service or by means of releasing a dangerous animal under circumstances evincing the actor’s intent that the animal obstruct governmental administration [BR 16].

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the seventh CCRB complaint to which § 87(2)(b) has been a party [BR 17].
- PO Byrnes has been a member of service for six years and has been a subject in four CCRB complaints and six allegations, none of which were substantiated. § 87(2)(g) [BR 18].

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- A FOIL request for the Notice of Claim was submitted to the Office of the New York City Comptroller on February 6, 2019 and will be added to the case file upon receipt [BR 19].
- § 87(2)(b) [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- § 87(2)(b) OCA history is not included because his date of birth could not be obtained.

Squad No.: _____

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date